

Memorandum 2001-11

**Statutes Made Obsolete by Trial Court Restructuring:
General Municipal Court Statutes**

In addition to county-specific statutes governing the various municipal courts (see Memorandum 2001-10), there are also statutes that refer to municipal courts generally. On unification of the last remaining nonunified courts (Kings County), the general statutory references to municipal courts should be reviewed and disposed of. The staff would give this project a low priority, until such a time as final unification actually occurs. We would propose a constitutional revision as part of the same package. See Memorandum 2001-13.

There follows a sampling of statutes illustrative of the variety of types of conforming revisions that should be considered.

Bus. & Prof. Code § 6079.1 (amended). Judges of State Bar Court

6079.1. (a) The Supreme Court shall appoint a presiding judge of the State Bar Court. In addition, five hearing judges shall be appointed, two by the Supreme Court, one by the Governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. The presiding judge and all other judges of that department shall be appointed for a term of six years and may be reappointed for additional six-year terms. Any judge appointed under this section shall be subject to admonition, censure, removal, or retirement by the Supreme Court upon the same grounds as provided for judges of courts of record of this state.

(b) Judges of the State Bar Court appointed under this section shall not engage in the private practice of law. The State Bar Court shall be broadly representative of the ethnic, sexual, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. Each judge:

(1) Shall have been a member of the State Bar for at least five years.

(2) Shall not have any record of the imposition of discipline as an attorney in California or any other jurisdiction.

(3) Shall meet such other requirements as may be established by subdivision (d) of Section 12011.5 of the Government Code.

(c) Applicants for appointment or reappointment as a State Bar Court judge shall be screened by an applicant evaluation committee as directed by the Supreme Court. The committee, appointed by the Supreme Court, shall submit evaluations and recommendations to the appointing authority and the Supreme Court as provided in Rule 961 of the California Rules of Court, or as otherwise directed by the Supreme Court. The committee shall submit no fewer than three recommendations for each available position.

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and expenses and provide adequate supporting staff and facilities. Hearing judges shall be paid ~~the same salary as municipal court judges~~ 91.3225 percent of the salary of a superior court judge. The presiding judge shall be paid the same salary as a superior court judge.

(e) From among the members of the State Bar or retired judges, the Supreme Court or the board may appoint pro tempore judges to decide matters in the Hearing Department of the State Bar Court when a judge of the State Bar Court is unavailable to serve without undue delay to the proceeding. Subject to modification by the Supreme Court, the board may set the qualifications, terms, and conditions of service for pro tempore judges and may, in its discretion, compensate some or all of them out of funds appropriated by the board for this purpose.

(f) A judge or pro tempore judge appointed under this section shall hear every regulatory matter pending in the Hearing Department of the State Bar Court as to which the taking of testimony or offering of evidence at trial has not commenced, and when so assigned, shall sit as the sole adjudicator, except for rulings that are to be made by the presiding judge of the State Bar Court or referees of other departments of the State Bar Court.

(g) Any judge or pro tempore judge of the State Bar Court as well as any employee of the State Bar assigned to the State Bar Court shall have the same immunity that attaches to judges in judicial proceedings in this state. Nothing in this subdivision limits or alters the immunities accorded the State Bar, its officers and employees, or any judge or referee of the State Bar Court as they existed prior to January 1, 1989. This subdivision does not constitute a change in, but is cumulative with, existing law.

(h) Nothing in this section shall be construed to prohibit the board from appointing persons to serve without compensation to arbitrate fee disputes under Article 13 (commencing with Section 6200) of this chapter or to monitor the probation of a member of the State Bar, whether those appointed under Section 6079, as added by Chapter 1114 of the Statutes of 1986, serve in the State Bar Court or otherwise.

Comment. Section 6079.1 is amended to convert the basis of a hearing judge's salary from that of a municipal court judge to that of a superior court judge. This change anticipates that municipal court judge salaries will not be maintained after abolition of the municipal courts through unification. A municipal court judge's salary is approximately 91.3225 percent of a superior court judge's salary. See Gov't Code §§ 68202-68203.

☛ **Staff Note.** We have rounded off the actual salary percentage here (which is a continuing decimal) to a place that will yield a difference of less than \$1 per year. It may be possible to round off further after discussions with interested parties.

Code Civ. Proc. § 73e (amended). Session at location of juvenile hall

73e. Notwithstanding any other provisions of law, in each county wherein the juvenile hall is not located at the county seat of the county, a majority of the judges of the superior court in and for ~~such~~ the county may by an order filed with the county clerk of ~~such~~ the county direct that a session or sessions of the superior court, while sitting for the purpose of hearing and determining cases and proceedings arising under Chapter 2 of Part 1 of Division 2 or Chapter 2 of Part 1 of Division 6 or Chapter 4 of Part 4 of Division 6 of the Welfare and Institutions Code, may be held or continued in any ~~judicial district~~ place in the county in which the juvenile hall is located and thereafter such session or sessions of the superior court may be held or continued in the ~~judicial district~~ place designated in ~~such~~ the order. In a county having two superior court judges the senior judge may make the order.

Comment. Section 73e is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution, and the consequent elimination of associated judicial districts. Cf. Section 38 (judicial districts).

☛ **Staff Note.** It is not clear whether the Task Force on Trial Court Facilities will review statutes relating to sessions. The Judicial Council is mandated to study "Superior court sessions, both general and special." See Section 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 84 (1998). We will coordinate our review of statutes with the work of the task force and of the Judicial Council.

The staff will research the "senior judge" issue. In all likelihood, a preferable reference would be to the "presiding judge."

Code Civ. Proc. § 75 (repealed). Superior court with one judge

~~75. The superior court in any county in which there is only one judge may by rule provide that, whenever the judge is absent from the county upon assignment by the Chairman of the Judicial Council, any noncontested matter in which no evidence is required, or which may be submitted upon affidavits, shall be deemed submitted upon the filing with the clerk of a statement of submission by the party or his attorney or upon the date set for the hearing.~~

Comment. Section 75 is repealed as obsolete. Every superior court has at least two judgeships due to unification of the municipal courts with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

☛ **Staff Note.** It is possible that the Legislature may reduce the number of authorized judgeships in a county. It is also possible that there may be only one judge acting, as a result of a vacancy. This matter is discussed in Memorandum 2001-6. We may wish to preserve this section for those contingencies.

Code Civ. Proc. § 84 (repealed). Process

~~84. The process of the municipal courts shall extend throughout the State.~~

Comment. Section 84 is deleted to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Code Civ. Proc. § 85.1 (amended). Original jurisdiction

~~85.1. Except as otherwise provided by statute, the municipal court, or the The superior court in a county in which there is no municipal court, has original jurisdiction in a limited civil case.~~

Comment. Section 85.1 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Query. Does this provision any longer serve a useful purpose? Article VI, Section 10 of the California Constitution provides, after prescribing the original writ jurisdiction of the courts, “Superior courts have original jurisdiction in all other causes except those given by statute to other trial courts.” See Memorandum 2001-11.

Code Civ. Proc. § 116.210 (amended). Small claims division

~~116.210. In each municipal court and each superior court in a county in which there is no municipal court, there shall be a small claims division. The small claims division may be known as the small claims court.~~

Comment. Section 116.210 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Code Civ. Proc. § 575 (amended). Promulgation of rules by Judicial Council

575. The Judicial Council may promulgate rules governing pretrial conferences, and the time, manner and nature thereof, in civil cases at issue, or in one or more classes thereof, in the superior and municipal courts.

Comment. Section 575 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Code Civ. Proc. § 1132 (amended). Confession of judgment

1132. (a) A judgment by confession may be entered without action either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. ~~Such~~ The judgment may be entered in any superior court ~~having jurisdiction for like amounts.~~

(b) A judgment by confession shall be entered only if an attorney independently representing the defendant signs a certificate that the attorney has examined the proposed judgment and has advised the defendant with respect to the waiver of rights and defenses under the confession of judgment procedure and has advised the defendant to utilize the confession of judgment procedure. The certificate shall be filed with the filing of the statement required by Section 1133.

Comment. Section 1132 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

Respectfully submitted,

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